

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C. FAHEEM R. HARDEMAN,  
Plaintiff,

vs.

No. C 04-3360 SI

AMTRAK/CALTRAIN RAILROAD,  
Defendants.  
-----/

**COPY**

DEPOSITION OF DONALD BRUCE SHELTON

(Pages 58 through 91

and pages 96 and 97 are confidential)

June 28, 2006

PATRICIA CALLAHAN & ASSOCIATES, INC.  
Certified Shorthand Reporters  
Oakland, California 510-835-3993  
San Francisco, California 415-788-3993  
Castro Valley, California 510-885-2371

Facsimile 510-247-9775  
WeReport@aol.com

Reported by:  
LaRelle M. Fagundes  
CSR No. 9762

**EXHIBIT I**

DONALD BRUCE SHELTON,

Being first duly sworn, testified as follows:

EXAMINATION BY MS. PRICE

MS. PRICE: Q. Can you state your name for the record, please.

A. First name is Donald Bruce Shelton.

Q. And what is your current occupation?

A. Conductor Amtrak.

Q. All right.

How long have you had that position?

A. Nine years.

Q. Was that your first position with the railroad?

A. Yes.

Would you help me out, by the way? We haven't been introduced.

Q. Sure. My name is Pamela Price. I represent Faheem Hardeman. This is my associate O-Kee Shim. She also represents Mr. Hardeman. And we're here to take your deposition and to ask you some questions about things that happened while Mr. Hardeman was employed and a little bit after he was terminated. Okay?

So have you ever had your deposition taken

1 A. No.

2 Q. Have you looked at your testimony in the  
3 investigatory hearing?

4 A. No.

5 Q. Okay.

6 Do you have a memory of your testimony at  
7 the investigatory hearing in May of 2003?

8 A. Vague.

9 Q. Okay.

10 Do you have a memory of the incident that  
11 sort of started all of this where there was a  
12 derailment on April 10th, 2003?

13 A. Fairly clear.

14 Q. Okay.

15 Why were you on the train that day, April  
16 10th, 2003?

17 A. I was an observer.

18 Q. What was your purpose in observing?

19 A. I had broken my back in a job injury and  
20 had been out of service for eight months  
21 recovering. And when you're out for that period of  
22 time, you need to requalify, become refamiliar with  
23 the job, physical characteristics of the railroad.  
24 On that day, I had opted to spend some time with  
25 the yard crew in San Francisco.

1 Q. Okay.

2 Were you being paid for your time?

3 A. Yes.

4 Q. And was this the only day that you were in  
5 this observer status?

6 A. In the San Francisco yard, yes.

7 Q. Okay.

8 Did you just do one day as an observer in  
9 the yard?

10 A. Yes.

11 Q. Okay.

12 Were there other locations where you were  
13 working but you were in an observer capacity?

14 A. San Jose yard and on board the trains  
15 themselves.

16 Q. Okay.

17 How many days had you been working in an  
18 observer capacity prior to April 10th, if any?

19 A. Not recalling what day April 10th was, it  
20 would have been a week total, about five days.

21 Q. And after you -- was there a period of time  
22 that you were planning to be in observer status?

23 A. I don't know that there was a definitive  
24 time period. I elected for about five days. I  
25 felt that would be more than sufficient.

1 worked a shift in San Jose; is that correct?

2 A. I had.

3 Q. Okay.

4 And you had worked a shift somewhere else?

5 A. I spent some time on the passenger trains.

6 Q. Okay. All right.

7 So on the morning of April the 10th, as  
8 part of your observation, do you recall what you  
9 were doing as the train came into the yard?

10 A. Well, the train was in the yard.

11 Q. Okay. All right.

12 Do you recall that morning if engine -- the  
13 engine that derailed, was that the first train you  
14 were observing on?

15 A. Yes.

16 Q. Okay.

17 Had you been on that particular section of  
18 the yard before?

19 A. Yes. I was yard conductor qualified in  
20 San Francisco. But having been gone for eight  
21 months, this, again, was a  
22 familiarization/qualification trip.

23 Q. Okay.

24 And was it your understanding you were just  
25 going to be observing the movement of the trains

1 Q. Okay.

2 Now, had you worked with Paul Soule prior  
3 to this day?

4 A. I have.

5 Q. Okay.

6 In what capacity?

7 A. As his conductor on occasion when I was  
8 assigned to the yard.

9 Q. Okay.

10 And have you worked with him since April  
11 10th, 2003?

12 A. To the best of my knowledge, no.

13 Q. Okay.

14 After the engine derailed, did you and  
15 Mr. Soule talk about what had happened?

16 A. Briefly, but I don't recall the substance  
17 of the conversation.

18 Q. Okay.

19 Did he say to you that Mr. Hardeman had  
20 told him that the switches were properly lined?

21 A. I believe that came up in the conversation,  
22 yes.

23 Q. Okay.

24 Was Mr. Hardeman present at the time of  
25 that conversation?

1 A. No.

2 Q. Okay.

3 Where was Mr. Hardeman?

4 A. I don't recall. Immediately after the  
5 incident, we were instructed to prepare incident  
6 reports. So Mr. Hardeman was undoubtedly preparing  
7 his at some other point on the property.

8 Q. Okay.

9 Were you and Mr. Soule together at the time  
10 that you were preparing your statements?

11 A. We were within proximity. We weren't  
12 collaborating on the report.

13 Q. But this conversation that you and he had  
14 about the statement by Mr. Hardeman took place  
15 while you were in proximity?

16 A. Yes, before we began doing the incident  
17 reports.

18 Q. Okay.

19 Was anyone else present?

20 A. Not to my knowledge, no.

21 Q. Okay.

22 Who asked you to prepare the incident  
23 report?

24 A. It's standard operating procedure, and this  
25 would have been on the instructions of management.

1 Q. Okay.

2 Do you recall who -- what manager asked you  
3 to do that?

4 A. To the best of my recollection, it would  
5 have been the trainmaster on duty, and it was  
6 Mike Howard.

7 Q. Okay.

8 Did Mr. Howard talk to you about your  
9 statement?

10 A. No. He merely solicited the statement, and  
11 we completed it, turned it in, and then submitted  
12 to a drug and alcohol test.

13 Q. Okay.

14 And were you off work while you were  
15 waiting for the results of your drug and alcohol  
16 test?

17 A. Yes, I was.

18 Q. How many days?

19 A. I believe between three and five days.

20 Q. Were you paid for that time?

21 A. No.

22 Q. Did you that morning following the  
23 derailment have a conversation with Billy Rogers?

24 A. Not that morning, no.

25 Q. Do you know who Billy Rogers is?



1 A. I do.

2 Q. Okay.

3 Did you ever have occasion to discuss this  
4 derailment with Billy Rogers?

5 A. I do.

6 Q. Okay.

7 When?

8 A. Several days after the incident.

9 Q. Okay.

10 Where?

11 A. On the telephone.

12 Q. Where were you?

13 A. At home.

14 Q. Okay.

15 And do you recall the conversation you had  
16 with Mr. Rogers?

17 A. He had called me asking about the alleged  
18 conversation that took place in the cab. And I  
19 told him I felt very comfortable about discussing  
20 this. He pressed the matter, so I did tell him  
21 that, yes, Paul Soule had asked the engineer if the  
22 switch points were lined properly, and that, yes,  
23 there was a response from Faheem Hardeman, the  
24 engineer, but I couldn't determine what the  
25 response was.

1 from the workplace?

2 A. To the best of my knowledge, yes, because  
3 we were both out of service at that point.

4 Q. Okay.

5 Did you have any conversation with  
6 Mr. Soule where your union reps were present?

7 A. Individually, but not with Paul.

8 Q. Okay.

9 So you had had contact with your union rep?

10 A. Yes.

11 Q. And it was your understanding that he had  
12 had contact with his union rep?

13 A. Without question.

14 Q. Okay.

15 So tell me what you recall about the first  
16 conversation that you and Mr. Soule had after you  
17 were taken out of service.

18 A. The shock at the fact that power derail was  
19 actually functioning.

20 Q. What are you referring to?

21 A. You're familiar with the derail device? It  
22 directs the cars' wheels off the track to protect  
23 equipment that is farther down the track.

24 Q. Yes, sir.

25 A. Usually those are manually operated. This

1 was the only power derail in the San Francisco  
2 yard. That hadn't been functional in years.

3 Q. How do you know that?

4 A. From my several years on the railroad and  
5 the time I'd spent working on the yard job.

6 Q. At the time of this derailment, in April of  
7 2003, the power derail switch actually directed the  
8 engine into the parking lot; is that correct?

9 A. Yes.

10 Q. Was that the employee parking lot?

11 A. Yes.

12 Q. And were you parked in that parking lot?

13 A. I was.

14 MR. GIVEN: Is that relevant to anything?

15 MS. PRICE: Oh, yeah.

16 Q. Were other employees parked in that parking  
17 lot?

18 A. Yes.

19 Q. Was it essentially a public parking lot?

20 A. No.

21 Q. Okay.

22 But it was open to people who were employed  
23 in the yard; is that correct?

24 A. Employed by Amtrak, yes.

25 Q. If the engine were to go -- actually derail

1 the property before you actually left?

2 A. I would guess between two and three hours.

3 Q. Okay.

4 What were you doing during that time?

5 A. Awaiting the arrival of management,  
6 completing an incident report, awaiting somebody  
7 from Oakland to administer a drug and alcohol test,  
8 and then I stuck around just to watch the rerail  
9 procedure.

10 Q. Okay.

11 And what was the rerail procedure?

12 A. When they attempt to place the locomotive  
13 back on the rails.

14 Q. Okay.

15 Was that done that morning?

16 A. It was, yes.

17 Q. Okay.

18 About how long did that take?

19 A. I'm guessing. Between 45 minutes to an  
20 hour.

21 Q. Okay.

22 Was there any damage to the engine that you  
23 were aware of?

24 A. No. Without wanting to go into a lot of  
25 unnecessary detail, when the wheels leave the

1 derail and the time that he left?

2 A. I'm sure I did. I cannot honestly tell you  
3 what that conversation would have entailed. I  
4 think all three of us expressed extreme surprise  
5 that that power derail was, in fact, functioning.

6 Q. Okay. Did you express that surprise to  
7 anyone in Amtrak management?

8 A. Yes.

9 Q. To whom?

10 A. I don't recall.

11 Q. Okay.

12 A. I know I did hear managers, and, again, I  
13 can't recall their names, but managers who showed  
14 up on the scene, who also expressed surprise that  
15 the power derail was, in fact, functioning.

16 Q. Do you recall if those managers included  
17 Mike Howard?

18 A. I don't recall.

19 Q. Did you see Billy Rogers that morning  
20 before you left?

21 A. Yes.

22 Q. Do you recall if he was -- had any surprise  
23 or was any way concerned about the power derail  
24 being active that morning?

25 A. If he registered surprise, I wasn't aware

1 Q. Did Paul indicate to you that he had spoken  
2 to Billy Rogers?

3 A. I don't recall.

4 Q. Before you went to the investigatory  
5 hearing -- withdraw that.

6 At the time of the investigatory hearing,  
7 did you have a union rep there?

8 A. I believe there was a union rep. I'm  
9 sorry. I should be able to answer that question.  
10 It was three years ago. I'm blanking out.  
11 Logically there would be a union rep there to  
12 protect the rights of the union members.

13 Q. Okay.

14 Before the investigatory hearing, had  
15 you -- do you recall signing a waiver regarding the  
16 discipline for this incident?

17 A. I didn't sign a waiver because -- initially  
18 I received a charge letter charging me with an  
19 operating rules violation, the rules being defined  
20 by the general code of operating rules. And I  
21 objected to that, because I wasn't a crew member.  
22 And I took that up with my rep, and I took it up  
23 with the senior manager and told him I'd fight it  
24 all the way. So they agreed that because I was a  
25 crew member, but I was present in the cab, that I

1 couldn't walk away from this untouched. So I was  
2 charged with a standards of excellence violation.  
3 The difference being that after two years, it's  
4 purged from your records. There would be no  
5 further violations.

6 Q. Who was the senior manager that you took it  
7 up with?

8 A. Charlie Barns.

9 Q. Okay.

10 And did you have -- did you personally  
11 speak to Mr. Miller?

12 A. I did.

13 Q. Tell me about your conversation with  
14 Mr. Miller.

15 A. I mentioned to him that I was not there in  
16 an official capacity. I was not a crew member. I  
17 was merely observer, that I was in no position to  
18 see the movement of the engine based on my position  
19 in the cab and that I should not be subjected to an  
20 operating rules violation.

21 Q. Okay.

22 And did he ask you any questions about what  
23 had happened?

24 A. He did.

25 Q. What did he ask you?

1 MS. PRICE: Yes, sir.

2 THE WITNESS: Possibly. I haven't read my  
3 incident report.

4 MS. PRICE: Okay.

5 Q. Well, when you talked to Mr. Miller, do you  
6 recall discussing the conversation with him?

7 A. I do.

8 Q. Okay.

9 What did you tell him?

10 A. I told him that I recalled Paul asking the  
11 question of Mr. Hardeman about whether the switch  
12 points were properly lined.

13 Q. Okay.

14 And did you tell him what Mr. Hardeman's  
15 response was?

16 A. I told him that Mr. Hardeman's response was  
17 unintelligible.

18 Q. Did he ask you where you were located when  
19 you heard that unintelligible response?

20 A. I'm sure he did, yes.

21 Q. Okay.

22 And did you tell -- did he ask you how far  
23 you were from Mr. Soule at the time of the  
24 conversation?

25 A. I'm sure he did.



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C. FAHEEM R. HARDEMAN,

Plaintiff,

vs.

No. C 04-3360 SI

AMTRAK/CALTRAIN RAILROAD,

Defendants.  
\_\_\_\_\_ /

**COPY**

DEPOSITION OF DONALD BRUCE SHELTON

(Pages 58 through 91

and pages 96 and 97 are confidential)

June 28, 2006

PATRICIA CALLAHAN & ASSOCIATES, INC.  
Certified Shorthand Reporters  
Oakland, California 510-835-3993  
San Francisco, California 415-788-3993  
Castro Valley, California 510-885-2371

Facsimile 510-247-9775  
WeReport@aol.com

Reported by:  
LaRelle M. Fagundes  
CSR No. 9762

DONALD BRUCE SHELTON,

Being first duly sworn, testified as follows:

EXAMINATION BY MS. PRICE

MS. PRICE: Q. Can you state your name for the record, please.

A. First name is Donald Bruce Shelton.

Q. And what is your current occupation?

A. Conductor Amtrak.

Q. All right.

How long have you had that position?

A. Nine years.

Q. Was that your first position with the railroad?

A. Yes.

Would you help me out, by the way? We haven't been introduced.

Q. Sure. My name is Pamela Price. I represent Faheem Hardeman. This is my associate O-Kee Shim. She also represents Mr. Hardeman. And we're here to take your deposition and to ask you some questions about things that happened while Mr. Hardeman was employed and a little bit after he was terminated. Okay?

So have you ever had your deposition taken

PATRICIA CALLAHAN & ASSOCIATES

1 A. No.

2 Q. Have you looked at your testimony in the  
3 investigatory hearing?

4 A. No.

5 Q. Okay.

6 Do you have a memory of your testimony at  
7 the investigatory hearing in May of 2003?

8 A. Vague.

9 Q. Okay.

10 Do you have a memory of the incident that  
11 sort of started all of this where there was a  
12 derailment on April 10th, 2003?

13 A. Fairly clear.

14 Q. Okay.

15 Why were you on the train that day, April  
16 10th, 2003?

17 A. I was an observer.

18 Q. What was your purpose in observing?

19 A. I had broken my back in a job injury and  
20 had been out of service for eight months  
21 recovering. And when you're out for that period of  
22 time, you need to requalify, become refamiliar with  
23 the job, physical characteristics of the railroad.  
24 On that day, I had opted to spend some time with  
25 the yard crew in San Francisco.

1 Q. Okay.

2 Were you being paid for your time?

3 A. Yes.

4 Q. And was this the only day that you were in  
5 this observer status?

6 A. In the San Francisco yard, yes.

7 Q. Okay.

8 Did you just do one day as an observer in  
9 the yard?

10 A. Yes.

11 Q. Okay.

12 Were there other locations where you were  
13 working but you were in an observer capacity?

14 A. San Jose yard and on board the trains  
15 themselves.

16 Q. Okay.

17 How many days had you been working in an  
18 observer capacity prior to April 10th, if any?

19 A. Not recalling what day April 10th was, it  
20 would have been a week total, about five days.

21 Q. And after you -- was there a period of time  
22 that you were planning to be in observer status?

23 A. I don't know that there was a definitive  
24 time period. I elected for about five days. I  
25 felt that would be more than sufficient.

1 worked a shift in San Jose; is that correct?

2 A. I had.

3 Q. Okay.

4 And you had worked a shift somewhere else?

5 A. I spent some time on the passenger trains.

6 Q. Okay. All right.

7 So on the morning of April the 10th, as  
8 part of your observation, do you recall what you  
9 were doing as the train came into the yard?

10 A. Well, the train was in the yard.

11 Q. Okay. All right.

12 Do you recall that morning if engine -- the  
13 engine that derailed, was that the first train you  
14 were observing on?

15 A. Yes.

16 Q. Okay.

17 Had you been on that particular section of  
18 the yard before?

19 A. Yes. I was yard conductor qualified in  
20 San Francisco. But having been gone for eight  
21 months, this, again, was a  
22 familiarization/qualification trip.

23 Q. Okay.

24 And was it your understanding you were just  
25 going to be observing the movement of the trains

1 Q. Okay.

2 Now, had you worked with Paul Soule prior  
3 to this day?

4 A. I have.

5 Q. Okay.

6 In what capacity?

7 A. As his conductor on occasion when I was  
8 assigned to the yard.

9 Q. Okay.

10 And have you worked with him since April  
11 10th, 2003?

12 A. To the best of my knowledge, no.

13 Q. Okay.

14 After the engine derailed, did you and  
15 Mr. Soule talk about what had happened?

16 A. Briefly, but I don't recall the substance  
17 of the conversation.

18 Q. Okay.

19 Did he say to you that Mr. Hardeman had  
20 told him that the switches were properly lined?

21 A. I believe that came up in the conversation,  
22 yes.

23 Q. Okay.

24 Was Mr. Hardeman present at the time of  
25 that conversation?

1 A. No.

2 Q. Okay.

3 Where was Mr. Hardeman?

4 A. I don't recall. Immediately after the  
5 incident, we were instructed to prepare incident  
6 reports. So Mr. Hardeman was undoubtedly preparing  
7 his at some other point on the property.

8 Q. Okay.

9 Were you and Mr. Soule together at the time  
10 that you were preparing your statements?

11 A. We were within proximity. We weren't  
12 collaborating on the report.

13 Q. But this conversation that you and he had  
14 about the statement by Mr. Hardeman took place  
15 while you were in proximity?

16 A. Yes, before we began doing the incident  
17 reports.

18 Q. Okay.

19 Was anyone else present?

20 A. Not to my knowledge, no.

21 Q. Okay.

22 Who asked you to prepare the incident  
23 report?

24 A. It's standard operating procedure, and this  
25 would have been on the instructions of management.

1 Q. Okay.

2 Do you recall who -- what manager asked you  
3 to do that?

4 A. To the best of my recollection, it would  
5 have been the trainmaster on duty, and it was  
6 Mike Howard.

7 Q. Okay.

8 Did Mr. Howard talk to you about your  
9 statement?

10 A. No. He merely solicited the statement, and  
11 we completed it, turned it in, and then submitted  
12 to a drug and alcohol test.

13 Q. Okay.

14 And were you off work while you were  
15 waiting for the results of your drug and alcohol  
16 test?

17 A. Yes, I was.

18 Q. How many days?

19 A. I believe between three and five days.

20 Q. Were you paid for that time?

21 A. No.

22 Q. Did you that morning following the  
23 derailment have a conversation with Billy Rogers?

24 A. Not that morning, no.

25 Q. Do you know who Billy Rogers is?

---



1 A. I do.

2 Q. Okay.

3 Did you ever have occasion to discuss this  
4 derailment with Billy Rogers?

5 A. I do.

6 Q. Okay.

7 When?

8 A. Several days after the incident.

9 Q. Okay.

10 Where?

11 A. On the telephone.

12 Q. Where were you?

13 A. At home.

14 Q. Okay.

15 And do you recall the conversation you had  
16 with Mr. Rogers?

17 A. He had called me asking about the alleged  
18 conversation that took place in the cab. And I  
19 told him I felt very comfortable about discussing  
20 this. He pressed the matter, so I did tell him  
21 that, yes, Paul Soule had asked the engineer if the  
22 switch points were lined properly, and that, yes,  
23 there was a response from Faheem Hardeman, the  
24 engineer, but I couldn't determine what the  
25 response was.

1 from the workplace?

2 A. To the best of my knowledge, yes, because  
3 we were both out of service at that point.

4 Q. Okay.

5 Did you have any conversation with  
6 Mr. Soule where your union reps were present?

7 A. Individually, but not with Paul.

8 Q. Okay.

9 So you had had contact with your union rep?

10 A. Yes.

11 Q. And it was your understanding that he had  
12 had contact with his union rep?

13 A. Without question.

14 Q. Okay.

15 So tell me what you recall about the first  
16 conversation that you and Mr. Soule had after you  
17 were taken out of service.

18 A. The shock at the fact that power derail was  
19 actually functioning.

20 Q. What are you referring to?

21 A. You're familiar with the derail device? It  
22 directs the cars' wheels off the track to protect  
23 equipment that is farther down the track.

24 Q. Yes, sir.

25 A. Usually those are manually operated. This

1     was the only power derail in the San Francisco  
2     yard. That hadn't been functional in years.

3     Q.         How do you know that?

4     A.         From my several years on the railroad and  
5     the time I'd spent working on the yard job.

6     Q.         At the time of this derailment, in April of  
7     2003, the power derail switch actually directed the  
8     engine into the parking lot; is that correct?

9     A.         Yes.

10    Q.         Was that the employee parking lot?

11    A.         Yes.

12    Q.         And were you parked in that parking lot?

13    A.         I was.

14               MR. GIVEN: Is that relevant to anything?

15               MS. PRICE: Oh, yeah.

16    Q.         Were other employees parked in that parking  
17    lot?

18    A.         Yes.

19    Q.         Was it essentially a public parking lot?

20    A.         No.

21    Q.         Okay.

22               But it was open to people who were employed  
23    in the yard; is that correct?

24    A.         Employed by Amtrak, yes.

25    Q.         If the engine were to go -- actually derail

1 the property before you actually left?

2 A. I would guess between two and three hours.

3 Q. Okay.

4 What were you doing during that time?

5 A. Awaiting the arrival of management,  
6 completing an incident report, awaiting somebody  
7 from Oakland to administer a drug and alcohol test,  
8 and then I stuck around just to watch the rerail  
9 procedure.

10 Q. Okay.

11 And what was the rerail procedure?

12 A. When they attempt to place the locomotive  
13 back on the rails.

14 Q. Okay.

15 Was that done that morning?

16 A. It was, yes.

17 Q. Okay.

18 About how long did that take?

19 A. I'm guessing. Between 45 minutes to an  
20 hour.

21 Q. Okay.

22 Was there any damage to the engine that you  
23 were aware of?

24 A. No. Without wanting to go into a lot of  
25 unnecessary detail, when the wheels leave the

1 derail and the time that he left?

2 A. I'm sure I did. I cannot honestly tell you  
3 what that conversation would have entailed. I  
4 think all three of us expressed extreme surprise  
5 that that power derail was, in fact, functioning.

6 Q. Okay. Did you express that surprise to  
7 anyone in Amtrak management?

8 A. Yes.

9 Q. To whom?

10 A. I don't recall.

11 Q. Okay.

12 A. I know I did hear managers, and, again, I  
13 can't recall their names, but managers who showed  
14 up on the scene, who also expressed surprise that  
15 the power derail was, in fact, functioning.

16 Q. Do you recall if those managers included  
17 Mike Howard?

18 A. I don't recall.

19 Q. Did you see Billy Rogers that morning  
20 before you left?

21 A. Yes.

22 Q. Do you recall if he was -- had any surprise  
23 or was any way concerned about the power derail  
24 being active that morning?

25 A. If he registered surprise, I wasn't aware

1 Q. Did Paul indicate to you that he had spoken  
2 to Billy Rogers?

3 A. I don't recall.

4 Q. Before you went to the investigatory  
5 hearing -- withdraw that.

6 At the time of the investigatory hearing,  
7 did you have a union rep there?

8 A. I believe there was a union rep. I'm  
9 sorry. I should be able to answer that question.  
10 It was three years ago. I'm blanking out.  
11 Logically there would be a union rep there to  
12 protect the rights of the union members.

13 Q. Okay.

14 Before the investigatory hearing, had  
15 you -- do you recall signing a waiver regarding the  
16 discipline for this incident?

17 A. I didn't sign a waiver because -- initially  
18 I received a charge letter charging me with an  
19 operating rules violation, the rules being defined  
20 by the general code of operating rules. And I  
21 objected to that, because I wasn't a crew member.  
22 And I took that up with my rep, and I took it up  
23 with the senior manager and told him I'd fight it  
24 all the way. So they agreed that because I was a  
25 crew member, but I was present in the cab, that I

1 couldn't walk away from this untouched. So I was  
2 charged with a standards of excellence violation.  
3 The difference being that after two years, it's  
4 purged from your records. There would be no  
5 further violations.

6 Q. Who was the senior manager that you took it  
7 up with?

8 A. Charlie Barns.

9 Q. Okay.

10 And did you have -- did you personally  
11 speak to Mr. Miller?

12 A. I did.

13 Q. Tell me about your conversation with  
14 Mr. Miller.

15 A. I mentioned to him that I was not there in  
16 an official capacity. I was not a crew member. I  
17 was merely observer, that I was in no position to  
18 see the movement of the engine based on my position  
19 in the cab and that I should not be subjected to an  
20 operating rules violation.

21 Q. Okay.

22 And did he ask you any questions about what  
23 had happened?

24 A. He did.

25 Q. What did he ask you?

1 MS. PRICE: Yes, sir.

2 THE WITNESS: Possibly. I haven't read my  
3 incident report.

4 MS. PRICE: Okay.

5 Q. Well, when you talked to Mr. Miller, do you  
6 recall discussing the conversation with him?

7 A. I do.

8 Q. Okay.

9 What did you tell him?

10 A. I told him that I recalled Paul asking the  
11 question of Mr. Hardeman about whether the switch  
12 points were properly lined.

13 Q. Okay.

14 And did you tell him what Mr. Hardeman's  
15 response was?

16 A. I told him that Mr. Hardeman's response was  
17 unintelligible.

18 Q. Did he ask you where you were located when  
19 you heard that unintelligible response?

20 A. I'm sure he did, yes.

21 Q. Okay.

22 And did you tell -- did he ask you how far  
23 you were from Mr. Soule at the time of the  
24 conversation?

25 A. I'm sure he did.



1 specific instruction given."

2 Do you see that?

3 A. I do.

4 Q. Okay.

5 And was that accurate at the time?

6 A. Yes.

7 Q. Okay.

8 Is it normally the conductor's  
9 responsibility to tell the engineer to move?

10 A. Yes.

11 Q. Okay.

12 You don't recall Mr. Soule telling  
13 Mr. Hardeman to move the engine?

14 A. I don't recall.

15 Q. Okay.

16 While these events were occurring, you  
17 weren't giving Mr. Hardeman any instructions, were  
18 you?

19 A. No.

20 Q. Okay.

21 And then directing your attention to the  
22 top of page 29, you were asked was there any  
23 conversation in the cab as to who was to protect  
24 the move.

25 Do you see that?

1           What were you looking at other than them?

2       A.       The bulkhead was directly across from me.

3       Q.       Okay.

4           And then you were asked -- the next  
5       question from Mr. Rogers was, and was there any  
6       conversation in the cab as to who was to protect  
7       the move.

8           And do you see that question?

9       A.       I do.

10      Q.       You stated, "I don't recall a specific  
11      conversation about it, anybody protecting the  
12      point, if that's what you're asking me."

13           Was that your testimony?

14      A.       That's correct.

15      Q.       And is that true?

16      A.       That's correct.

17      Q.       And what did you mean by I don't recall --  
18      well, withdraw that.

19           What did you mean by the statement "anybody  
20      protecting the point"?

21      A.       Typically in a railroad that would mean you  
22      physically leave the cab and proceed to the rear of  
23      the movement. In this case, the rear of the  
24      locomotive. And then using the grab irons on the  
25      side of the locomotive, you position yourself there

1 for a better vantage point. And the engineer then  
2 proceeds on your instructions.

3 Q. How frequently is that done in the railroad  
4 industry?

5 A. When you're moving a single engine, not  
6 very often.

7 Q. How frequently is it done -- well, withdraw  
8 that?

9 Have you ever done that?

10 A. Rarely.

11 Q. Okay. Then you were asked how did you all  
12 know that your route was going to be protected.

13 Do you see that?

14 A. Yes.

15 Q. Okay.

16 And your answer -- can you read your answer  
17 at the --

18 A. I'm not certain I understand this response.  
19 Well, we had the yard A/C --

20 Q. No. No. No. I'm sorry.

21 The response found at the bottom half of  
22 page 29.

23 If you --

24 A. Oh, okay. All right.

25 Q. So you indicated there that you were kind

1 of guided by the experience of the yard A/C calls.

2 Do you know what that means, or what you  
3 meant by -- is that what you said?

4 A. I think that may have been an error in  
5 transcription. But I was being guided by the  
6 experience of the yard assistant conductor, and  
7 that would have been Paul Soule.

8 Q. Okay.

9 And what did you mean by that?

10 A. It's difficult to argue with 32 years of  
11 experience.

12 Q. Okay.

13 And you indicated that it was your  
14 understanding that most of -- or a lot of  
15 Mr. Soule's 32 years of experience was working in  
16 that San Francisco yard; is that correct?

17 A. That's correct.

18 Q. All right.

19 And then you also indicated, as you've  
20 testified here, that this was a switch that none of  
21 you had ever seen function before; is that correct?

22 A. That's correct.

23 Q. Now, you indicated there that several of  
24 the managers were talking amongst themselves in the  
25 parking lot. Half of them indicated they thought

1       the switch was spiked and out of service.

2                   Do you see that?

3       A.           I do.

4       Q.           And do you recall that that is something  
5       that you observed and heard?

6       A.           I do, yes.

7       Q.           Okay.

8                   And when you said they thought the switch  
9       was spiked and out of service, do you know what  
10      that -- what did you mean by that?

11      A.           When they spike a switch, they use a  
12      railroad spike to drive a spike in against one of  
13      the points so that the switch can't be moved.

14      Q.           Okay.

15      A.           That takes it out of service permanently.

16      Q.           Okay.

17      A.           Or in this case, the derail. Be the same  
18      thing.

19      Q.           All right.

20                   And then Mr. Rogers asked you, "So in other  
21      words, you're saying nobody was complying with the  
22      rule 6.27 and protecting the movement."

23                   Do you see that?

24      A.           I do.

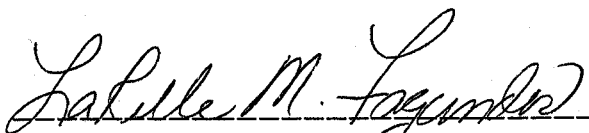
25      Q.           Did you -- and your response was, "There

CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter, State of California, hereby certify that the witness in the foregoing deposition was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed this 5th day of July, 2006.



LARELLE M. FAGUNDES, CSR 9762